IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

Bail Appl..No. 4938 of 2007()

CRIME NO.226 OF 2007 OF TOWN POLICE STATION, KANNUR

: PETITIONERS (ACCUSED)

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1. A.M.PRASAD, S/O.A.M.NARAYANAN, AGED 57, RESIDING AT GURUSHAKTHI, 20/1246 A, PANNIYANKARA, P.O.KALLAI, KOZHIKODE.

2. RAJITHA PRASAD, W/O.A.M.PRASAD, AGED 44, RESIDING AT GURUSHAKTHI, 20/1246 A, PANNIYANKARA, P.O.KALLAI, KOZHIKODE.

BY ADV. SRI.HARISH R. MENON
SRI.K.T.SHYAMKUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No. 4938 of 2007

Dated this the 14th day of August, 2007

ORDER

The petitioners face allegations, inter alia, under Section 420 I.P.C. They are the Managing Director and Director respectively of a chitty company. The crux of the allegations against the petitioners is that they induced subscribers including the defacto complainant to part with money with no serious intention of repaying the same. The company has been closed and the petitioners are absconding without making payment, it is alleged.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The company has been making every endeavour to make the payment due to the subscribers. At worst there is only breach of obligations under civil law and there are no elements of the offence of cheating punishable under the criminal law, submits counsel.

3. The application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that the petitioners have to be interrogated. There are no circumstances warranting or justifying the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

4. Having considered all the relevant inputs, I am of the opinion that there are no features in this case which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. It is for the petitioner to appear before the learned Magistrate and seek regular bail in the ordinary course.

5. This application for anticipatory bail is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-